

SUMMARY ORDER

John Turner v. City of New York, et al., 10cv4464 (ILG)(MDG)

This order addresses the letter motion of Shlomit Aroubas, counsel for defendants, to stay this action (ct. doc. 4) because defendant John Walsh, a police officer, is currently on active military leave from the New York City Police Department. While defense counsel is correct that the Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. Appx. § 521(d)(2006) permits the Court to stay the action, this Court is not persuaded that the defendant City of New York will be prejudiced if discovery proceeds before counsel is able to communicate with this defendant. Even if counsel is correct that Officer Walsh has "vital information regarding the May 27th incident" which resulted in plaintiff's first arrest, that is not, in itself, a reason to stay all discovery in this case. Officer Walsh was involved in only one of the four discreet incidents alleged in the complaint and other officers may have participated in the May 27th arrest and subsequent alleged strip search at the precinct. Officer Walsh's absence will not affect the City's investigation or defense as to the other incidents and may not necessarily have any significant impact on discovery as to the May 27th incident. Even as to the incident involving Officer Walsh, document discovery can proceed and any relevant witnesses can be deposed.

The one case that defendants cite in support of their argument that the entire case should be stayed involved only one individual officer who apparently was not properly served. Franklin v. Balestrieri, 2002 U.S. Dist. Lexis 458 (S.D.N.Y. Jan. 14, 2002). The concern in that case was prejudice to the individual officer. That can be readily addressed by staying discovery as to the defendant on active duty.

Thus, the motion to stay the entire action is denied, but discovery is stayed as to Officer Walsh. The length of the stay shall be discussed at the initial conference.

SO ORDERED.

Dated: Brooklyn, New York
January 5, 2010

/s/
MARILYN D. GO
UNITED STATES MAGISTRATE JUDGE